IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6399 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIMANA BHARATSINH JETHABHAI

Versus

DIST PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 6399 of 2001

MR KB PUJARA for Petitioner No. 1

MR RA MISHRA for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 1,2-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/11/2001

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. counsel Mr. R.A. Mishra for the respondents. With the consent of the parties, the matter is taken up for final hearing

today.

2. The petitioner, by means of filing this petition, has invoked jurisdiction of this Court under Article 226 of the Constitution of India and as prayed that this Court should quash and set aside the impugned order dated 12.10.2000 (Annex.B) passed by respondent no.1 terminating his services with effect from 21.10.2001. The petitioner has further prayed that respondents be directed to reinstate the petitioner in service with full back wages and continuity of service and all other consequential benefits.

3. The case of the petitioner is that the petitioner belongs to Schedule Tribe and was appointed as a Teacher by the respondents. After going through selection procedure, the petitioner was selected by the duly constituted Selection Committee and after fully satisfying and verifying about the petitioner's testimonials, appointment order was issued to the petitioner on 12.3.1991. The petitioner immediately joined the services and served for a period of about 10 years. During the service tenure, all of a sudden, the petitioner was served with order of termination dated 12.10.2000 effecting the order with effect from 21.12.2000. Since the impugned order is passed by way of punishemnt under sec.24(1) of the Bombay Primary Education ACt,1947 without contemplating and holding the inquiry under the Gujarat Panchayat Service (Discipline & Appeal) Rules, 1964, the petitioner has prayed to quash and set aside the impugned order of termination.

4. I have carefully considered the averments made in the petition and submissions made. The petitioner has mainly relied on the decision of this Court (Coram: H.K.Rathod,J) in Spl.C.A.No.11317/2000 dt; 27.12.2000 wherein the issue involved in this petition is squarely covered. It has been submitted that the facts of the present case are almost identical and similar to the facts of the aforesaid Spl.C.A. No.11317/2000 and, therefore, decision dt; 27.12.2000 rendered by this Court in the aforesaid decision directly applies to the facts of the present case. The petitioner has also relied on the decisions of this Court in Spl.C.A.No. 3188/2001 (Coram : M.S. Shah,J) dated 2.5.2001 and order dated 13.7.2001 in Spl.C.A. No. 4303/2001 (Coram: D.H.Waghela,J), involving same issues and having identical facts of the case, copies of which are annexed with this petition.

5. Ld. counsel Mr. R.A. Mishra, appearing for the

respondents, during the course of submissions has accepted that the facts of the decided cases and the facts of the present case are similar. He, however, submits that the petition suffers from the vice of delay and latches. The petitioner could have approached the Court well in time because the petitioner has prayed for back wages. One can not get advantage of delay for paying amount of back wages.

6. During the course of submissions, ld. counsel Mr. Mishra has also pointed out that earlier decisions has been challenged by the other side by way of filing Letters Patent Appeal and the same is pending. This Court has granted ad-interim relief in that appeal. In view of the interim orders passed by the Division Bench of this Court in Letters Patent Appeal, the respondents are not obliged to pay back wages for the present.

7. Considering the totality of the facts of the case and decisions relied on by the ld. counsel appearing for the petitioner, I am inclined to allow this petition. This petitioner could have been given advantage of the earlier decisions by reinstating him with all consequential benefits on his submitting simple application by approaching the department. Respondents, being a Model Employer, should not have refused such request. Under the circumstances, when the petitioner has approached this Court, I am not inclined to accept the submission of ld. counsel Mr. Mishra that this petition deserves to be dismissed on the ground of delay and latches.

8. In view of the facts and circumstances of the case and settled legal position referred to above, this petition is allowed. The impugned order of termination dated 12.10.2000 (Annex.B) is hereby quashed and set aside. Respondents are directed to reinstate the petitioner in service with continuity of service and with full back wages and with all consequential benefits. Respondents are directed to reinstate the petitioner in service within One Month from from the date of service of order and shall pay all consequential monatory benefits within Four Months from the date of receipt of writ of this Court.

9. Rule is made absolute accordingly. No costs.
Direct Service is permitted.

1.11.2001 [C.K. BUCH, J]
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